

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

US FOODS, INC.,

Case No.:

Plaintiff,

v.

Electronically Filed

WILLIAM T. KANE aka BILL T. KANE, an individual; and RONALD G. LINABURG, D.D.S., an individual,

JURY DEMANDED

Defendants.

COMPLAINT

Plaintiff US Foods, Inc. (“US Foods” or “Plaintiff”), by and through its counsel, Bryan Cave Leighton Paisner LLP and Strassburger McKenna Gutnick & Gefsky, against Defendants William T. Kane aka Bill T. Kane (“Kane”) and Ronald G. Linaburg, D.D.S. (“Dr. Linaburg,” and collectively with Kane, the “Guarantors”), hereby alleges as follows:

THE PARTIES

1. Plaintiff US Foods is a Delaware corporation with its principal place of business at 9399 West Higgins Road, Suite 600, Rosemont, Illinois 60018. US Foods is registered as a foreign corporation licensed to do business in the State of Pennsylvania. US Foods is one of America’s leading foodservice distributors to restaurants, healthcare and hospitality facilities, government operations, and educational institutions across the country, including in the State of Pennsylvania.

2. Defendant Kane is a resident and citizen of Pennsylvania, domiciled at 252 4th Avenue, Braddock, Pennsylvania 15104.

3. Defendant Dr. Linaburg is a resident and citizen of Pennsylvania, domiciled at 924 Valleyview Road, Pittsburgh, Pennsylvania 15243.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is diversity among the parties because Plaintiff is a citizen of Illinois and Guarantors are citizens of Pennsylvania.

5. Venue is proper pursuant to 28 U.S.C. § 1391 because (i) Guarantors reside within this judicial district, and (ii) a substantial part of the transaction giving rise to Plaintiff's claims occurred in this division of this judicial district.

GENERAL ALLEGATIONS

6. From as early as January 2018, US Foods supplied various food and food-related products and services to 5171 Campbells Land Co., Inc. ("Campbells").

7. In connection with these transactions, Campbells executed a Customer Account Application (the "Agreement") dated as of January 25, 2018. A true and correct copy of the Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

8. Campbells agreed to be bound by the terms of the Agreement, invoices and other documents furnished by US Foods, and to pay all charges set forth on each invoice pursuant to the credit terms on the invoices. (*See Exhibit A*).

9. Campbells also agreed to pay all costs, expenses and fees, including attorneys' fees, which may be incurred by US Foods in enforcing or protecting its rights under the Agreement. (**Exhibit A**, p. 3, ¶ 4).

10. Further, Campbells agreed to pay interest in the amount of 1.5% per month on any payment past due until collected. (**Exhibit A**, p. 3, ¶ 4).

11. The Agreement includes a personal guaranty executed by Guarantors (the “Guaranty”). (**Exhibit A**, p. 4).

12. Pursuant to the Guaranty, Guarantors “personally and unconditionally” guarantied payment of all amounts then owing, and thereafter owed by the Campbells. (**Exhibit A**, p. 4).

13. Further, in the event of a default by the Campbells, US Foods has the right to proceed directly against Guarantors without first exhausting other remedies. (*Id.*).

14. Campbells ordered, received, and accepted delivery of goods and services from US Foods as reflected on invoices sent by US Foods to Campbells.

15. Pursuant to the payment terms contained in the Agreement and the invoices, Campbells was obligated to make payments to US Foods in the full invoice amount for goods and services received.

16. US Foods performed all of its obligations by supplying Campbells with the purchased goods and services and submitting invoices.

17. As of the date of this Complaint, US Foods is owed a total of \$600,512.14 on past due invoices accrued pursuant to the Agreement, exclusive of interest, costs and fees (the “Unpaid Invoices”). A summary of Unpaid Invoices for Campbells is attached hereto and incorporated herein as **Exhibit B**.

18. As of the date of the filing of this Complaint, US Foods has not received payment in full for the amounts owed under the Agreement and Unpaid Invoices.

COUNT I
BREACH OF GUARANTY

19. US Foods incorporates and re-alleges each and every one of the allegations set forth in paragraphs 1 through 18 above as though fully set forth herein.

20. Campbells agreed to abide by the terms of the Agreement and invoices under which US Foods supplied goods and services to Campbells. (*See Exhibit A*).

21. US Foods fully performed its obligations, including supplying all required goods and services to Campbells.

22. Campbells accepted all goods and services supplied by US Foods.

23. US Foods submitted invoices to Campbells for the goods and services supplied under the Agreement. (*See Exhibit B*).

24. Campbells failed to pay US Foods the outstanding balance owed.

25. Guarantors executed the Guaranty, unconditionally guaranteeing all of Campbells' payment obligations to US Foods. (**Exhibit A**, p. 4).

26. The Guaranty imposes liability on Guarantors for Campbells' payment obligations under the Agreement. (**Exhibit A**, p. 4).

27. Guarantors's obligations include, but are not limited to, payment of the debt, interest and the costs of enforcement of Campbells's obligations, including reasonable attorneys' fees. (**Exhibit A**, p. 4).

28. The Guaranty further provides that US Foods has the right to proceed directly against Guarantors to collect and recover the full amount of the indebtedness. (**Exhibit A**, p. 4).

29. Guarantors have failed to perform their duties and obligations under the Guaranty.

30. By refusing to pay the indebtedness, Guarantors have breached the Guaranty. (**Exhibit A**, p. 4).

31. US Foods has been damaged in the amount of \$600,512.14 exclusive of interest, costs and fees. (*See Exhibit B*).

COUNT II
ACCOUNT STATED
(In the alternative to Count I)

32. US Foods incorporates and re-alleges each and every one of the allegations set forth in paragraphs 1 through 18 above as though fully set forth herein.

33. Before the institution of this action, US Foods and Campbells had an on-going business relationship in which Campbells ordered goods and services from US Foods, for a period of time.

34. US Foods supplied goods and services to Campbells as evidenced by the invoices US Foods submitted to Campbells for the goods and services supplied.

35. The invoices were delivered to Campbells in accordance with US Foods' normal accounting procedures.

36. The parties agreed on the balances of the amounts due and owing for said goods and services.

37. US Foods rendered invoices to Campbells for the delivery of said goods and services to which Campbells did not object.

38. Pursuant to the Guaranty, Guarantors "personally and unconditionally" guarantied payment of all amounts then owing, and thereafter owed by the Campbells. (Exhibit A, p. 4).

39. Guarantor owes US Foods \$600,512.14, plus interest and fees pursuant to the Guaranty.

WHEREFORE, pursuant to the foregoing, US Foods requests: (i) that judgment be entered in its favor and against Guarantors on Count I of the Complaint in such amount to be determined at trial, but no less than \$600,512.14, plus interest, costs and fees; (ii) or, in the alternative, that judgment be entered in its favor and against Guarantors on Count II of the Complaint in such amount to be determined at trial, but no less than \$600,512.14, plus interest, costs and fees; and (iii) that Plaintiff be granted such other and further relief as the Court shall deem just and proper.

Dated: August 2, 2019

/s/*Gretchen E. Moore*

Gretchen E. Moore, Esquire

Pa. Id. No. 202103

Adam J. Tragone, Esquire

Pa. Id. No. 322479

Strassburger McKenna Gutnick & Gefsky

Four Gateway Center, Suite 2200

444 Liberty Avenue

Pittsburgh, PA 15222

(412) 281-5423

(412) 281-8264

gmoore@smgglaw.com

atragone@smgglaw.com

/s/*Maria Vathis*

Maria Vathis, Esquire

(admission *pro hac vice* pending)

BRYAN CAVE LEIGHTON PAISNER LLP

161 North Clark Street, Suite 4300

Chicago, Illinois 60601

(312) 602-5000

(312) 602-5050

maria.vathis@bclplaw.com

Counsel for US Foods, Inc.